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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1437

PHYLLIS LYNCH, KELLY M. ALEXANDER, JR., ROBERT STEELE AND FLEDORA GRIER, PETITIONERS,

versus

FRANK W. SNEPP, THOMAS F. MOORE, JR., DONALD W. STAHL, AND ALL PERSONS IN STAHL'S EMPLOY, RESPONDENTS.

REPLY BRIEF TO ARGUMENT FIRST RAISED IN RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

PAGE

Carroll v. Commissioners of Princess Anne, 393 U. S. 175, 21 L. Ed. 325 (1968) 3

Roe v. Wade, ... U. S. ...., 35 L. Ed. (2d) 147 (1973) 2

Southern Pacific Terminal Co. v. I.C.C., 219 U. S. 498, 31 S. Ct. 279, 55 L. Ed. 310 (1911) 2

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PETITIONERS PRESENT THE FOLLOWING ARGUMENT IN REPLY TO AN ARGUMENT FIRST RAISED IN THE RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI.

ARGUMENT

The issue is not moot.

It is correct, as respondents state, that the State Court Injunctions of October, 1972, have been dissolved,[1] and

[1] Brief of Respondents, page 6; Respondents' Appendix, page 15.

that the substantially similar injunction of March 6, 1973,[2] was dissolved on March 16, 1973.[3] Thus there have been repeated injunctions, the second of which lasted for only ten days, during which ten days Petitioners were not afforded an opportunity to be heard in the State Court.[4] The issue is thus classically "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. I. C. C.*, 219 U. S. 498, 515, 55 L. Ed. 310, 31 S. Ct. 279 (1911); *Roe v. Wade*, —— U. S. ——, 35 L. Ed. (2d) 147, 161 (1973). Although a NAACP Club was officially sanctioned at East Mecklenburg High School shortly after January 22, 1973,[5] the District Court found[6] that Petitioners seek to form NAACP Clubs at other schools, not just at East Mecklenburg. Thus the recognition at East Mecklenburg does not moot the persistence of the issue of what restraints may be placed on Petitioners' organizational ac-

[2] The Brief of Respondents states, at page 6, that this second injunction was filed March 7, 1973. This is an inadvertence. Respondents' Appendix, at page 20, states March *6*, 1973, as the filing date, as do the original papers. In fact, the injunction was filed at 7:39 p. m, March 6, 1973, and the Petition on which it was premised, Respondents' Appendix, page 18, was filed five minutes later, at 7:44 p. m., March 6, 1973.

[3] An appeal from the Injunction of March 6, 1973, was taken by Petitioners in the North Carolina Court of Appeals, consolidated with the previous appeal, see Respondents' Brief, page 6, and the consolidated cases argued on June 27, 1973.

[4] The hearing noticed for March 12, 1973, see Respondents' Appendix at page 22, was continued at the request of the State Plaintiff, the Charlotte-Mecklenburg Board of Education, and over objection of Petitioners.

[5] Respondents' Brief, page 7.

[6] Appendix to Petition for Writ of *Certiorari*, pages 22-23.

tivities. *Carroll v. Commissioners of Princess Anne,* 393 U. S. 175, 178-79, 21 L. Ed. (2d) 325, 329-30 (1968).

Respectfully submitted.

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PROOF OF SERVICE

I hereby certify that I have this day personally deposited three copies of the foregoing Reply Brief to Argument First Raised in Respondents' Brief into the United States Post Office at Charlotte, North Carolina, first class postage prepaid, addressed to:

MR. ROBERT MORGAN,
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Counsel for the Respondents.

I further certify that Raleigh, North Carolina, is less than 500 miles from Charlotte, North Carolina, and that I am a member of the bar of the Supreme Court of the United States. All parties required to be served have been served.

This —— day of August, 1973.

GEORGE S. DALY, JR.